ABDUL RAHMAN SUHAIMI A

v.

PP

HIGH COURT MALAYA, IPOH B
CHOONG SIEW KHIM JC
[CRIMINAL APPEAL NO: 42A-8-2007]
12 MARCH 2011

CRIMINAL LAW: *Anti-Corruption Act 1997 - Section 10(a)(bb) - Offence of accepting gratification - Appealing against conviction and sentence on three charges - Whether request or solicitation initiated from accused - Whether complainant an accomplice - Whether inclusion of s. 34 Penal Code in first charge occasioned miscarriage of justice - Whether two years' imprisonment for each charge ordered to run consecutively should be concurrent* C D

The accused was the head of traffic of the District Police Headquarters in Teluk Intan, Perak. He was convicted and sentenced in the Sessions Court on three charges for the offence of accepting gratification under s. 10(a)(bb) of the Anti-Corruption Act 1997 (the 'Act') (read with s. 34 of the Penal Code which was only included in the first charge) punishable under s. 16 of the Act. (Editor's note: The Anti-Corruption Act 1997 has been repealed by the Malaysian Anti-Corruption Commission Act 2009 [Act 694].) The accused was sentenced to two years' imprisonment with RM10,000 fine on each charge. The imprisonment terms were ordered to run consecutively. The facts were that demands for protection money were made on the complainant ('SP3') by members of the mobile police vehicle unit (MPV). The protection money was to prevent the issuance of traffic summonses. The MPV and the traffic units were under the supervision of the accused. Arrangements were made through one Azizan from the traffic unit to meet the accused. The first meeting was held on 20 December 1999 as per the first charge following which it was agreed that a sum of RM900 was to be paid. Subsequently, RM400 was paid to the accused by SP3 on 24 December 1999 (the second charge) with the balance of RM500 paid on 24 January 2000 (the third charge). SP3 reported the matter to the Anti-Corruption Agency which led to the charges brought against the accused and his subsequent conviction and sentence. E F G H I

A The accused now appealed against his conviction and sentence.

The issues were (1) whether, as submitted by the accused, there was no request or solicitation that was initiated from the accused; (2) whether SP3 was an accomplice by virtue of his role and
B therefore ought not to have been protected under s. 44 of the Act as decided by the sessions judge; (3) whether the inclusion of s. 34 Penal Code in the first charge occasioned any miscarriage or failure of justice; and (4) whether the sentences imposed ordered to run consecutively should be concurrent instead.

C **Held (dismissing appeal against conviction but allowing appeal against sentence):**

(1) There was adequate evidence within the context of the first charge pertaining to the facts that the accused 'agreed to
D accept' the payment. Solicitation was not an ingredient of the charge. (para 4)

(2) Although the sessions judge did not specifically find whether SP3 was an accomplice, the evidence showed that SP3 was
E more of an agent provocateur. Whether a payer or a receiver was an accomplice depended entirely upon the facts of each particular case (*Ng Kok Lian & Anor v. PP*, refd). A complainant was not an accomplice but a partisan witness if he reported to the Anti-Corruption Agency and an informer if
F he had participated in leading to the corrupt payment (*Shaiful Idzam Sulaiman v. PP; Teja Singh & Mohamed Nasir v. PP*, foll). He was also not an accomplice if he made himself an agent for the prosecution before the actual commission of the offence (*Sathasivam and Two Ors v. PP*, foll). (paras 8-12)

G **(3)** The evidence showed that SP3 had made himself an agent for the prosecution for the purpose of disclosing corrupt practices and in the case involving the accused, it was before the actual perpetration of the offence. Hence, SP3's evidence did not
H require corroboration of the kind required of an accomplice. SP3's evidence was also amply corroborated by evidence. In addition, s. 44 of the Act was the lynchpin for the prosecution. (paras 13 & 14)

(4) There was overwhelming and convincing evidence that money
I did pass from SP3 to the accused who accepted it. The trial judge did not err in finding that the defence, being one of mere denial, was not probably true and failed to rebut the

s. 42 presumption under the Act. Neither did the defence amount to an innocent explanation which the court could consider more likely than not to be true. (para 20)

(5) The inclusion of s. 34 of the Penal Code in the first charge did not occasion any miscarriage or failure of justice against the accused although the accused was the only one indicted on the first charge. Although Azizan who took part in the discussion on 20 December 1999 was not charged, it was entirely up to the discretion of the Public Prosecutor who to charge for the commission of an offence. Further, following the Court of Appeal decision in *Msimanga Lesaly v. PP*, s. 34 of the Penal Code did not create a substantive offence but was merely a rule of evidence to infer joint responsibility for a criminal act performed by a plurality of persons. From the line of defence taken by the accused, it was clear the he fully appreciated the nature of the prosecution's case without implicating Azizan or any other person. The inclusion of s. 34 in the first charge did not render the charge bad as it did not affect the nature and essence of the charge against the accused based on the evidence adduced against him. A conviction would be upheld despite the misdirection when the appellate court was satisfied that a reasonable tribunal would have convicted the accused on the available evidence on a proper direction. In the circumstances, there was sufficient evidence to support the conviction under the first charge and the error had not occasioned a failure of justice (*PP v. Ishak Hj Shaari & Other Appeals*, foll). (paras 21-24)

(6) On the consecutive sentences imposed, the sessions judge applied the right sentencing principles. However, as the offences under the second and third charges were a follow-up from the first charge and within the one transaction rule, the consecutive sentences should be substituted with concurrent sentences (*Bachik Abdul Rahman v. PP*, foll). That would be fair taking into consideration that the appellant was totally deprived of all his benefits and entitlements upon his conviction and that at the time of conviction, being 49 years of age, he was already near retirement. The concurrent sentences would be sufficient enough punishment and retribution to the accused apart from sending a strong deterrent signal to other would-be offenders of the same mind. (paras 27-29)

Case(s) referred to:
Bachik Abdul Rahman v. PP [2004] 2 CLJ 572 CA ***(foll)***
Msimanga Lesaly v. PP [2005] 1 CLJ 398 CA ***(refd)***
Ng Kok Lian & Anor v. PP [1983] 2 CLJ 247; [1983] CLJ (Rep) 293 FC ***(refd)***
PP v. Ishak Hj Shaari & Other Appeals [2003] 3 CLJ 843 CA ***(foll)***
Sathasivam And Two Ors v. PP [1948] 1 LNS 61 HC ***(foll)***
Shaiful Idzam Sulaiman v. PP [2004] 2 CLJ 121 HC ***(foll)***
Teja Singh & Mohamed Nasir v. PP [1949] 1 LNS 96 HC ***(foll)***
Thavanathan Balasubramaniam v. PP [1997] 3 CLJ 150 FC ***(refd)***
Tunde Apatira & Ors v. PP [2001] 1 CLJ 381 FC ***(refd)***

Legislation referred to:
Anti-Corruption Act 1997, s. 44
Criminal Procedure Code, s. 422
Penal Code, s. 34

For the appellant - Abdul Roni Abd Rahman; M/s Abdul Roni & Co
For the respondent - Saiful Hazmi Mohd Saad DPP

Reported by Usha Thiagarajah

JUDGMENT

Choong Siew Khim JC:

[1] The appellant, who was the Head of Traffic IPD Teluk Intan at the material time, was charged and tried at the Sessions Court, Teluk Intan, on these three counts:

> Pertuduhan Pertama
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> Bahawa kamu pada 20 Disember 1999, lebih kurang jam 8.35 malam, di sebuah kedai Diwanis Tomyam, Kampung Bahagia, dalam Daerah Teluk Intan, di dalam Negeri Perak, sebagai Ketua Cawangan Trafik Polis DiRaja Malaysia yang bertugas di Ibu Pejabat Polis Daerah (IPD) Teluk Intan, Perak, telah secara rasuah bersetuju untuk menerima satu suapan sebanyak RM900.00 daripada seorang Aini bin Imran, untuk anggota-anggota Cawangan Trafik, IPD Teluk Intan, sebagai suatu dorongan untuk tidak melakukan suatu perbuatan yang dicadangkan akan berlaku, yang mana ia melibatkan suatu Badan Awam, iaitu, Polis DiRaja Malaysia, iaitu, sebagai bayaran untuk memberi perlindungan bagi enam bulan kepada tiga buah lori milik Aini bin Imran sekiranya melakukan kesalahan-kesalahan lalulintas, dengan itu kamu telah melakukan kesalahan di bawah seksyen

10(a)(bb) Akta Pencegahan Rasuah 1997 (Akta 575) dengan dibaca bersama seksyen 34 Kanun Kesiksaan dan boleh dihukum di bawah seksyen 16 Akta yang sama.

Pertuduhan Kedua

Bahawa kamu pada 24 Disember 1999, lebih kurang jam 1.08 tengahari, di tempat letak kereta, Pasar Teluk Intan, dalam Daerah Teluk Intan, di dalam Negeri Perak, sebagai ejen Kerajaan Malaysia, iaitu, sebagai Ketua Cawangan Trafik Polis DiRaja Malaysia di Ibu Pejabat Polis Daerah (IPD) Teluk Intan, Perak, telah secara rasuah menerima satu suapan, iaitu wang tunai RM400.00 daripada seorang Aini bin Imran, untuk anggota-anggota Cawangan Trafik IPD Teluk Intan, sebagai suatu dorongan untuk tidak melakukan suatu perbuatan yang dicadangkan akan berlaku yang mana ia melibatkan suatu Badan Awam, iaitu, sebagai pendahuluan untuk bayaran perlindungan selama enam bulan kepada tiga buah lori milik Aini bin Imran sekiranya melakukan kesalahan-kesalahan lalulintas, dengan itu kamu telah melakukan kesalahan di bawah seksyen 10(a)(bb) Akta Pencegahan Rasuah 1997 (Akta 575 dan boleh dihukum di bawah seksyen 16 Akta yang sama.

Pertuduhan Ketiga

Bahawa kamu pada 24 Januari 2000, lebih kurang jam 1.00 tengahari, di Gerai Makan Asmah, Kampong Bahagia, dalam Daerah Teluk Intan, di dalam Negeri Perak, sebagai ejen Kerajaan Malaysia, iaitu, sebagai Ketua Cawangan Trafik Polis DiRaja Malaysia di Ibu Pejabat Polis Daerah (IPD) Teluk Intan, Perak, telah secara rasuah menerima satu suapan, iaitu wang tunai RM500.00 daripada seorang Aini bin Imran, untuk anggota-anggota Cawangan Trafik IPD Teluk Intan, sebagai suatu dorongan untuk tidak melakukan suatu perbuatan yang dicadangkan akan berlaku yang mana ia melibatkan suatu Badan Awam, iaitu, Polis DiRaja Malaysia, iaitu, baki bayaran untuk bayaran perlindungan selama enam bulan kepada tiga buah lori milik Aini bin Imran sekiranya melakukan kesalahan-kesalahan lalulintas, dengan itu kamu telah melakukan kesalahan di bawah seksyen 10(a)(bb) Akta Pencegahan Rasuah 1997 (Akta 575) dan boleh dihukum di bawah seksyen 16 Akta yang sama.

[2] He was found guilty and convicted of the three charges. He was sentenced to two years' imprisonment together with a RM10,000 fine on each charge with the imprisonment terms to run consecutively. His appeal is against conviction and sentence.

[3] The learned Sessions Judge set out extensively and in detail in her grounds of judgment the facts of the case and the salient evidence adduced which she held made out a *prima facie* case against the appellant on the three charges. Reference was made to that (pp. 300 to 339 of the Appeal Record). In a nutshell, the events leading to the charges started off with demands for protection money ("wang tutup mata") made on the complainant Aini bin Imran (SP3) by members of the MPV unit (mobile police vehicle unit) related to lorries belonging to his employer which operated in the Langkap area for the transportation and disposal of rubbish in the event traffic offences were committed in the course of such work. The payments were to prevent the issuance of traffic summonses. For the said purpose to avoid summonses from the traffic unit (the MPV and the traffic units were under the supervision of the accused who was then the head of the traffic and public order department of the District Police Headquarters of Hilir Perak, Teluk Intan), arrangements were made through one Azizan bin Abas (who was not called by the prosecution but offered to the defence at the end of the prosecution case) from the traffic unit to meet the accused. The first meeting was on 20 December 1999 as per the first charge following which it was agreed that a lump sum of RM900 was to be paid for three lorries at a rate of RM50 per lorry for a period of six months. Subsequent to that, RM400 was paid to the accused by SP3 on 24 December 1999 ("the second charge") with the balance of RM500 paid on 24 January 2000 ("the third charge").

[4] Based on the petition of appeal and the submissions of learned counsel for the appellant, three main issues pertaining to the finding of conviction were raised. It was firstly contended that based on the evidence adduced, there was no request or solicitation that initiated from the accused and thus the trial judge had erred by finding that he had solicited for the gratification. It was alleged that it was SP3 who had wanted to meet the accused and not *vice versa*. There was no doubt about this but having read the notes of proceedings and assessed the evidence in totality, I was inclined to disagree with learned counsel on this point because he had, in my view, overlooked there was adequate evidence within the context of the first charge pertaining to the fact that the accused "agreed to accept". Solicitation was not an ingredient of the charge.

[5] Following the meeting and discussion on 20 December 1999, there was clearly agreement on the part of the accused to accept payment from SP3 who eventually paid the sum to the accused in two parts of RM400 and RM500 respectively. A perusal of transcript P27B and the flow of conversation between SP3, Azizan and the accused evidently showed there was a form of haggling on the amount to be paid which culminated in the accused stating that it would be easier to pay in a lump sum and ended with SP3 saying these words:

> Aku bagi kamu berapa? Kalau seratus 150, kalau enam bulan. Ya Zan seratus sembilan ratus tuan, tuan Azizan minta, serbu. Ha., ha ...

[6] Earlier to this, the accused had said:

> Dak kami, Dak kami orang, ikut satu biji lima puluh tak kurang.

(Note: Suara 1 refers to SP3 and Suara 3 refers to the accused in transcript P27B).

[7] As stated earlier, three lorries were involved making a sum of RM150 in total at the rate of RM50 for one lorry. The conversation on 20 December 1999 concluded with an agreement to fix the payment at RM50 for one lorry and payable in a lump sum. It was obvious too from the transcript that the accused did not decline at all to accept payment by and from SP3.

[8] Going on to the next inter-linked issue that SP3 played an active role in entrapping the accused on the instructions of the BPR officers (although the accused did not solicit in contrast to the MPV personnel who had demanded payment), it was argued that SP3 was an accomplice by virtue of his role and hence the learned Sessions Judge ought not to have decided that SP3 was protected under the provisions of s. 44 of the Anti-Corruption Act. Even though the Sessions Judge did not specifically find whether the accused was an accomplice or otherwise, again from my appraisal of the notes of evidence I would venture to state that SP3 was more of an agent provocateur than accomplice.

[9] I was guided by the Federal Court decision in *Ng Kok Lian & Anor v. PP* [1983] 2 CLJ 247; [1983] CLJ (Rep) 293. Although this case touched on whether a witness alleging that he had been given gratification by the accused is, *prima facie*, an accomplice, the same rationale applies if the witness is a payer. An examination of his evidence is paramount before finding whether

A he is an accomplice or not. In the case of a witness giving the bribe, as was the case with SP3, the rule as laid down in *Ng Kok Lian & Anor v. PP (supra)* is not whether he is a *particeps criminis* or he has the requisite *mens rea*. If he is not or has not, be he a payer or a receiver, he cannot be an accomplice. Whether a payer B or a receiver is an accomplice depends entirely upon the facts of each particular case.

[10] Heliliah Mohd Yusof J (as she then was) in *Shaiful Idzam Sulaiman v. PP* [2004] 2 CLJ 121 had occasion to consider facts C along the same line and after reference to various authorities that differentiated an accomplice from an agent provocateur/spy/decoy/ informer, she held that the complainant was not an accomplice but a partisan witness having reported to the Anti-Corruption Agency besides being an informer who had participated in leading D to the corrupt payment.

[11] The statement of law on this same point was followed by Spenser Wilkinson J in *Teja Singh & Mohamed Nasir v. PP* [1949] 1 LNS 96 after he considered the following:

E I think the law is correctly stated in the case of *Emperor v. Chaturbhuj Sahu* where the head note reads as follows:

> A person who makes himself an agent for the prosecution with the purpose of discovering and disclosing the commission of an offence, either before associating with F wrong doers or before the actual perpetration of the offence is not an accomplice but a spy, detective or decoy whose evidence does not require corroboration, though the weight to be attached to it depends on the character of each individual witness in each case. But a person who is G associated with an offence with a criminal design, and extends no aid to the prosecution till after its commission is an accomplice requiring corroboration.

[12] It was also held in *Sathasivam And Two Ors v. PP* [1948] 1 LNS 61 that a witness who has made himself an agent for the H prosecution before the actual commission of the offence is not an accomplice.

[13] In the instant case, SP3 reported to the Anti-Corruption Agency about what was amiss at the traffic department of IPD I Teluk Intan in relation to traffic police closing their eyes to offences if payments were made to them. The MPV unit jump-started the whole thing (see P4). SP3 made himself an agent for

the prosecution for the purpose of disclosing corrupt practices and in the case involving the accused, it was before the actual perpetration of the offence and hence SP3's evidence did not require corroboration of the kind required of an accomplice.

[14] SPS's evidence in any event was held by the trial judge to have been amply corroborated by witnesses SP5, SP6, SP7, SP8, SP10 and SP13 as well as tape recordings P27 - P30, transcripts P27B, P28B, P29A and P30A and photographs P2. She added that the prosecution had adduced overwhelming evidence against the accused and I saw no justifiable reason to digress from that. Section 44 of the Anti-Corruption Act is also the lynch-pin for the prosecution.

[15] The appellant further took issue that the two photographs P16A and B which show where the RM500 was recovered from (as per third charge) was a mere re-enactment ("lakaran semula"), with the photographs taken after the money was found from the dashboard of the Pajero. According to SP13, the money was placed back from where it was found before the photographs were taken. Since the money was not recovered from the accused himself (the money was recovered from the glove compartment), it was submitted that a reasonable doubt had been raised that the accused had received the said money.

[16] It was my view however that this was a futile argument since evidence of the transaction of the handing over of RM500 to the accused who accepted it on 24 January 2000 at Gerai Makan Asmah was based on the consistent testimony of SP3 and SP5 (a BPR officer posing as SP3's wife) who were credibly corroborated by evidence adduced particularly from SP2, SP7, SP8 and SP10 who were at the scene. Photographs P2A-Z and P2AA-AE indisputably show the sequence of the incident.

[17] Over and above this, the serial numbers of the recovered money (P12) tallied with the serial numbers noted in the marked notes list (P11) which was signed by SP5 who received the money from SP13 before the meeting with the accused at Gerai Makan Asmah. The accused and Azizan came to the food-stall in the Pajero as shown in P2AD and AE. SP5 was the one who put the RM500 inside the fold of P7 (which belonged to the accused) before it was given to the accused who accepted and held it in his left hand before getting up to leave. It was to me erroneous to therefore submit that it was doubtful whether the accused had received and accepted the payment.

[18] The learned trial judge rightly went on to invoke the s. 42 presumption. In addition, the vein of the discussion on 20 December 1999 between the accused, SP3 and Azizan clearly indicated the corrupt intention shown by the accused which culminated in the payment of RM400 on 24 December 1999 and RM500 on 24 January 2000. These two payments were consistent with the accused's agreement on 20 December 1999 for a lump sum payment of six months.

[19] The essence of the defence was basically a denial of the first charge by the accused that there was a discussion about payment to prevent any action taken against SP3's lorries at Restaurant Diwanis or anything stated by him to SP3 for lump sum payments. It was also a denial by him that he accepted RM400 from SP3 pertaining to the second charge although he admitted that he met SP3 at the market. On the third charge, he did not deny he gave P7 to SP3 at his (SP3's) request. However he did not see SP3 or SP5 putting money inside P7. He did not examine what was inside P7 when he took it from the table. He denied that he placed the money together with P7 inside the Pajero's dashboard. Although the RM500 (P12) was not found from the accused's body, there was *prima facie* evidence that he was seen holding in the grip of his left hand P12 and on reaching the Pajero which was parked outside the stall, he was seen partially seated on the front passenger seat in front of the dashboard with his right hand holding the dashboard. The testimony of SP7 and SP8 totally ruled out the possibility that someone else rather than the accused had placed the RM500 inside the dashboard. SP8 who arrested Azizan near the driver's door instructed Azizan to lock the Pajero before proceeding to the Rest House to conduct a search on them based on the expectation that the money was in the accused's possession. When the search was futile, they went back to the Pajero where the accused showed the money in the dashboard. SP10 issued the search list P19 the significance of which the accused knew when he signed on the bottom left, being a senior police officer. Although no one witness actually saw the accused putting P7 with its contents P12 inside the glove compartment, these circumstances belied the denial of the accused.

[20] The crux of the matter anyhow is that money did pass from SP3 to the accused who accepted it and of this, there was overwhelming and convincing evidence adduced by the prosecution as found by the trial judge after her assessment of the evidence. The trial judge hence did not err when she found that the defence, being one of mere denial, was not probably true and therefore failed to rebut the s. 42 presumption. Neither did the defence, in my view, amount to an innocent explanation which the court could consider more likely than not to be true (see *Thavanathan Balasubramaniam v. PP* [1997] 3 CLJ 150).

[21] Although this matter was not relied on as a ground in the petition of appeal, it was somewhat of concern that s. 34 was cited in the first charge when the accused was the only person charged for the offence. Section 34 of the Penal Code speaks for itself and according to learned counsel for the appellant, this was a fundamental error and illegality not curable under s. 422 of the Criminal Procedure Code. Azizan who took part in the discussion on 20 December 1999 was not charged. Be that as it may, it is entirely within the discretion of the public prosecutor who to charge for the commission of an offence. The appellant was the only one indicted on the first charge. I believed this could not be brushed off as a typographical error going by the submission of the learned deputy. I was instead inclined to regard that the inclusion of s. 34 did not occasion any miscarriage or failure of justice against the accused based on the Court of Appeal decision in *Msimanga Lesaly v. PP* [2005] 1 CLJ 398 where it was held that s. 34 of the Penal Code did not create a substantive offence but was merely a rule of evidence to infer joint responsibility for a criminal act performed by a plurality of persons. From the line of defence taken by the accused in the instant case, it was clear that he fully appreciated the nature of the prosecution case without implicating Azizan or any other person. The inclusion of s. 34 in the first charge did not render the charge bad as it did not affect the nature and essence of the charge against the accused based on the evidence adduced against him.

[22] The Sessions Court judge referred to s. 34 in this manner (at p. 352 of the Appeal Record):

> Dengan demikian mahkamah ini berpendapat pihak pendakwa telah berjaya membuktikan tuduhan pertama iaitu kesalahan s. 10(a)(bb) Akta Pencegahan Rasuah 1997 dibaca bersama s. 34 Kanun Keseksaan tanpa keraguan yang munasabah.

[23] There was nothing in the first charge to suggest or infer joint responsibility and complicity, so there was obviously a misdirection here. However a conviction will be upheld despite a misdirection when the appellate court is satisfied that a reasonable tribunal would have convicted the accused on the available evidence on a proper direction (see *Tunde Apatira & Ors v. PP* [2001] 1 CLJ 381).

[24] Based on the foregoing, there was sufficient evidence to support the conviction under the first charge and the error has not occasioned a failure of justice (see *PP v. Ishak Hj Shaari & Other Appeals* [2003] 3 CLJ 843 at p. 862 where a misdirection on the standard of proof was curable under s. 422 of the Criminal Procedure Code provided there was sufficient evidence to support the conviction).

[25] Ultimately there was no merit to the appeal against conviction on the three charges. The finding on conviction was consistent with the evidence.

[26] On the appeal against sentence basically on the two years' imprisonment imposed on each charge to run consecutively, it was urged upon me that the consecutive terms were excessive. Without dispute from the respondent that the two payments on 24 December 1999 (RM400) and 24 January 2000 (RM500) were connected with the lump sum payment of RM900, I viewed the three charges to be very closely related and more precisely, the second and third charges were the consequence of the first charge where the accused agreed to accept the lump sum payment of RM50 per lorry.

[27] It was stated by the Court of Appeal in *Bachik Abdul Rahman v. PP* [2004] 2 CLJ 572 at p. 579:

> The exercise of the discretion to determine the date of commencement of the sentence of imprisonment is dependent on the facts and circumstances of each case. In deciding whether the terms of imprisonment should be consecutive or commence at another date the court will be guided by the one transaction rule and the totality principle. Pursuant to the one transaction rule where two or more offences are committed in the course of a single transaction all sentences in respect of these offences should be concurrent rather than consecutive (see *R v. Saleem* [1964] Crim LR 482; *R v. Walsh* [1965] Crim LR 248). For there to be

one transaction four elements must be present, that is to say, proximity of time, proximity of place, continuity of action and continuity of purpose or design (see *Jayaraman & Ors v. PP* [1979] 2 MLJ 88; *Amrita Lal Hazra v. Emperor* 42 Cal 957; *Chin Choy v. PP* [1955] 1 LNS 17; [1955] MLJ 236).

[28] While the Sessions Court judge did not err in applying the right sentencing principles, I was nevertheless of the opinion that the offences under the second and third charges were a follow-up from the first charge and being closely tied up as to amount to one transaction involving continuity of action and purpose, the circumstances warranted me to accede to the appeal by substituting the consecutive sentences with that of concurrent. In deciding that the sentences should run concurrently being more appropriate and fair, I was also mindful that the appellant would have been totally deprived of all his benefits and entitlements upon his conviction and at the time of conviction, he was already aged 49, almost near to retirement.

[29] The concurrent imprisonment sentences of two years each would be sufficient enough punishment and retribution to the appellant besides sending a strong deterrent signal to other would-be offenders of the same mind. Accordingly the appeal against sentence was allowed to this extent.